

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCE

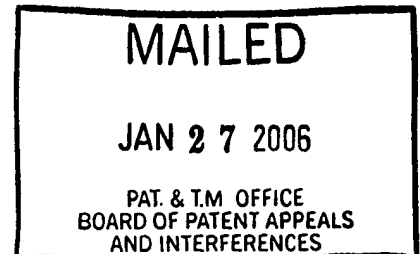
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Ex parte KENDRA L. DUNLAP, DELLAS G. FREDERIKSEN  
and DUSTIN C. ROSING

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Application 09/967,303

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on January 13, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing are identified below.

On January 23, 2002, appellants filed an Information Disclosure Statement (IDS). It is not clear from the record whether the examiner considered the IDS or whether the examiner notified appellants of why their submission did not meet the criteria set forth in 37 CFR §§ 1.97 and 1.98.

A review of the IFW application indicates that the Appeal Brief filed April 11, 2005 does not fully comply with all the requirements of the 37 CFR § 41.37.

37 CFR § 41.37(c) states in part:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

. . . . .

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

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A supplemental Appeal Brief containing the missing Evidence appendix, in compliance with 37 CFR § 41.37, is required.

For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule located at the following URL:

[www.uspto.gov/web/office/dcom/bpai/fr2004/moreinfo.html](http://www.uspto.gov/web/office/dcom/bpai/fr2004/moreinfo.html)

Accordingly, it is ORDERED that the application is return to the Examiner to:

- 1) consider the Information Disclosure Statements filed January 23, 2002;
- 2) provide appropriate written notification by the examiner to appellants of such consideration;
- 3) to have a copy of the consideration of the Information Disclosure Statement scanned into the record;

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- 4) to notify appellants to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37;
- 5) for consideration of the supplemental Appeal Brief, and if necessary, to submit a revised Examiner's Answer in response thereto;
- 6) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCE



CRAIG R. FEINBERG  
Program and Resource Administrator  
(571) 272-9797

CRF/pgc

cc: Hewlett-Packard Company  
Intellectual Property Administration  
P.O. Box 272400  
Fort Collins, CO 80527-2400